

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MARCUS CHERRY,

Petitioner,

v.

//

CIVIL ACTION NO. 1:12CV23
(Judge Keeley)

TERRY O'BRIEN, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On January 31, 2012, the pro se petitioner, Marcus Cherry ("Cherry"), filed a petition pursuant to 28 U.S.C. § 2241, alleging that the Discipline Hearing Officer ("DHO") at United States Penitentiary Hazelton had unlawfully revoked his good time credits without adequate due process. The Court referred this matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with LR PL P 2. On May 3, 2012, the respondent, Terry O'Brien ("O'Brien"), filed a Motion to Dismiss or For Summary Judgment. (Dkt. No. 13). Although the magistrate judge issued a Roseboro notice to the petitioner on May 8, 2012, Cherry filed no response.

On June 6, 2012, Magistrate Judge Kaul issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that O'Brien's motion to dismiss or for summary judgment be granted and the petitioner's § 2241 petition be denied and dismissed with prejudice. (Dkt. No. 19). The magistrate judge determined that the DHO had afforded Cherry adequate due process prior to revoking his

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good conduct time.

The R&R also specifically warned Cherry that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. The parties did not file any objections.* Finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 19), **GRANTS** the motion to dismiss (dkt. no. 13), **DENIES** the § 2241 petition (dkt. no 1) and **ORDERS** that this case be **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: September 21, 2012.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

* The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).